

Wisconsin Business Closing Notification Law

2003-04 Statutes updated through January 15, 2006.

Chapter DWD 279 of the Wisconsin Administrative Code, which implements the Business Closing Notification Law, is also included

109.07 Mergers, liquidations, dispositions, relocations or cessation of operations affecting employees; advance notice required.

For more information, contact us at:

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6TH ST
ROOM 255
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Website: <http://dwd.wisconsin.gov/er/>

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109.07 Mergers, liquidations, dispositions, relocations or cessation of operations affecting employees; advance notice required.

(1) In this section:

(a) "Affected employee" means an employee who loses, or may reasonably be expected to lose, his or her employment with an employer who is required to give notice under sub. (1m) because of the business closing or mass layoff.

(b) "Business closing" means a permanent or temporary shutdown of an employment site or of one or more facilities or operating units at an employment site or within a single municipality that affects 25 or more employees, not including new or low-hour employees.

(c) "Employee benefit plan" means a plan as defined in 29 USC 1002 (3).

(d) "Employer" means any business enterprise that employs 50 or more persons in this state.

(e) "Highest official" means the mayor of a city, town board chairperson or village president, except as follows:

1. For a city organized under subch. I of ch. 64, "highest official" means both the president of the city council and the city manager.

2. For a village organized under subch. I of ch. 64, "highest official" means both the president of the village board of trustees and the village manager.

(f) "Mass layoff" means a reduction in an employer's work force that is not the result of a business closing and that affects the following numbers of employees at an employment site or within a single municipality, not including new or low-hour employees:

1. At least 25% of the employer's work force or 25 employees, whichever is greater; or
2. At least 500 employees.

(g) "Municipality" means a city, village or town.

(h) "New or low-hour employee" means an employee who has been employed by an employer for fewer than 6 of the 12 months preceding the date on which a notice is required under sub. (1m) or who averages fewer than 20 hours of work per week.

(1m) Subject to sub. (5) or (6), an employer who has decided upon a business closing or mass layoff in this state shall promptly notify the subunit of the department that administers s. 106.15, any affected employee, any collective bargaining representative of any affected employee, and the highest official of any municipality in which the affected employment site is located, in writing of such action no later than 60 days prior to the date that the business closing or mass layoff takes place. The employer shall provide in writing all information concerning its payroll, affected employees and the wages and other remuneration owed to such employees as the department may require. The department may in addition require the employer to submit a plan setting forth the manner in which final payment in full shall be made to affected employees. The department shall promptly provide a copy of the notice required under this subsection to the department of commerce and to the office of the commissioner of insurance and shall cooperate with the department of commerce in the performance of its responsibilities under s. 560.15 and with the office of the commissioner of insurance in the performance of its responsibilities under s. 601.41 (7). This subsection does not apply to a business closing or mass layoff that is caused by a strike or lockout.

(3) (a) If an employer fails to give timely notice to an affected employee as required under sub. (1m), the affected employee may recover, as provided under sub. (4), all of the following:

1. Pay, for the days during the recovery period described under par. (c) that the employee would have worked if the business closing or mass layoff had not occurred, based on the greater of the following:

a. The employee's regular rate of pay from the employer, averaged over the shorter of the 3-year period preceding the business closing or mass layoff or the entire period during which the employee was employed by the employer.

b. The employee's regular rate of pay from the employer at the time of the business closing or mass layoff.

2. The value of any benefit that the employee would have received under an employee benefit plan during the recovery period described under par. (c), but did not receive because of the business closing or mass layoff, including the cost of medical treatment incurred that would have been covered under the employee benefit plan.

(b) The amount that an employee may recover under par. (a) shall be reduced by any cost that the employer incurs by crediting the employee, under an employee benefit plan, for time not actually served because of a business closing or mass layoff.

(c) The recovery period under par. (a) begins on the day that the business closing or mass layoff occurs. The recovery period equals the number of days in the period beginning on the day on which an employer is required to give notice under sub. (1m) and ending on whichever of the following occurs first:

1. The day that the employer actually gave the notice to the employee.
2. The day that the business closing or mass layoff occurred.

(4) (a) An employee whose employer fails to notify timely the employee under sub. (1m) may file a claim with the department. If the employee files a claim with the department no later than 300 days after the business closing or mass layoff, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer was late in providing notice and, on behalf of the employee, attempt to recover from the employer the payment under sub. (3).

(b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the employee of its determination under par. (a), whichever is first, the department shall refer the claim to the department of justice. The department of justice may bring an action in circuit court on behalf of the employee to recover the payment under sub. (3).

(c) If the department of justice does not bring an action under par. (b) within 120 days after the claim is referred to it, the employee may bring an action in circuit court to recover the payment under sub. (3). If the employee prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

(4m) (a) If an employer fails to give timely notice to the highest official of a municipality as required under sub. (1m), the department shall assess a business closing surcharge against the employer of not more than \$500 for each day in the period beginning on the day that the employer was required to give notice to the highest official and ending on the earlier of the day that the employer actually gave notice to the highest official or the day that the business closing or mass layoff occurred.

(b) The department shall deposit business closing surcharges collected under par. (a) in the general fund.

(5) (a) An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines all of the following:

1. When the notice under sub. (1m) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the business closing or mass layoff.

2. That the employer reasonably and in good faith believed that giving the notices to all parties required under sub. (1m) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par. (a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the department's rules.

The employer shall provide the department with an affidavit verifying the content of the notarized documents.

(6) An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines that the business closing or mass layoff is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to hire substantially all of the affected employees with not more than a 6-month break in employment.

(b) The relocation of part or all of an employer's business within a reasonable commuting distance, if the employer offers to transfer substantially all of the affected employees with not more than a 6-month break in employment.

(c) The completion of a particular project or work of a specific duration, including seasonal work, if the affected employees were hired with the understanding that their employment was limited to the duration of such work or project.

(d) Business circumstances that were not foreseeable when the notice would have been timely given.

(e) A natural or man-made disaster beyond the control of the employer.

(f) A temporary cessation in business operations, if the employer recalls the affected employees on or before the 60th day beginning after the cessation.

(7) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any employer who violates this subsection shall forfeit not more than \$100.

(8) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1975 c. 380; 1983 a. 84, 149; 1983 a. 192 s. 304; 1983 a. 538; 1987 a. 27; 1989 a. 44, 228; 1995 a. 27, ss. 3782 and 9116 (5); 1997 a. 51.

Cross Reference: See also ch. DWD 279, Wis. adm. code. The application of this section is limited to business closures of employment sites, defined by reference to geography rather than ownership. A transfer of business assets does not constitute a business closing unless it results in either a temporary or permanent shutdown in the operation of the business site. *State v. T.J. International, Inc.* 2001 WI 76, 244 Wis. 2d 481, 628 N.W.2d 774, 99-2803.

There is no private cause of action under this section. *Henne v. Allis-Chalmers Corp.*, 660 F. Supp. 1464 (E. D. Wis. 1987).

Chapter DWD 279

BUSINESS CLOSING AND MASS LAYOFF

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Note: Chapter Ind 79 was renumbered chapter ILHR 279 under s. 13.93 (2m) (b) 1., Stats., Register, February, 1996, No. 482. Chapter ILHR 279 was renumbered chapter DWD 279 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, May, 1997, No. 497.

DWD 279.001 Purpose. The purpose of this chapter is to implement s. 109.07, Stats., which provides remedies for an employer's failure to provide notice of a business closing or mass layoff in certain cases. The chapter provides criteria for exceptions and is designed to aid the administration and enforcement of the law.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.002 Interpretation. Whenever possible, this chapter will be interpreted in a manner consistent with the Federal Worker Adjustment and Retraining Notification Act, 29 USC 2101, *et seq.*, the federal regulations and court decisions interpreting that Act to the extent that the provisions of federal and state law are the same.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91; correction made under s. 13.93 (2m) (b) 7., Stats, Register, April, 2001, No. 544.

DWD 279.01 Definitions and scope. (1) When used in this chapter or in s. 109.07, Stats.:

(a) "Affected employee" has the meaning specified in s. 109.07 (1) (a), Stats. An employee that suffers loss of employment is an affected employee if that loss is the result of an employment termination (other than a discharge for cause, voluntary departure or retirement), a layoff exceeding 6 months or a reduction in hours of work of more than 50% during each month of any 6-month period. An affected employee does not include an employee discharged for cause or employees who terminate their employment as a result of retirement or voluntary departure. Business partners as well as consultant or contract employees who are paid by another employer or are self employed are not affected employees of the business to which they are assigned.

(b) "Business closing" has the meaning specified in s. 109.07 (1) (b), Stats.

(c) "Department" means the department of workforce development.

(d) "Employer" has the meaning specified in s. 109.07 (1) (d), Stats., but does not include the federal or state government or any of their political subdivisions. Charitable or tax-exempt institutions and organizations are also not included. Independent contractors and wholly or partially owned subsidiaries that are independent from the parent corporation are considered separate employers for the purposes of this section.

(e) "Employment site" as used in s. 109.07, Stats. means a single location or group of locations within the same municipality or reasonable geographic proximity that share the same or related staff or operational purpose. Employment sites that have separate workforces, separate management, or produce different products are separate employment sites.

(f) "Facilities" as used in s. 109.07 (1) (b), Stats., means a building or buildings.

(g) "Mass layoff" has the meaning specified in s. 109.07 (1) (f), Stats.

(h) "Municipality" means a city, town or village.

(i) "New or low hour employee" has the meaning specified in s. 109.07 (1) (h), Stats.

(j) "Operating units" as used in s. 109.07 (1) (b), Stats., means an organizationally or operationally distinct operation or specific work function within or across facilities at an employment site. Only distinct structural or operational entities within an employment site are intended to be included as "operating units."

(k) "Persons" as used in s. 109.07 (1) (d), Stats., does not include new or low-hour employees.

(L) "Substantially all" as used in s. 109.07 (6) (a) and (b), Stats., means that number of an employers affected employees who if hired or offered transfer, will make the total number of affected employees experiencing a loss of employment, as determined by the department on a case by case basis less than the thresholds for a "business closing" or "mass layoff" as defined in s. 109.07 (1) (b) or (f), Stats.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.02 Employer notice. (1) An employer who has decided upon a business closing or mass layoff in this state shall provide written notice of the closing or mass layoff to the department, any affected employee, any collective bargaining representative of any affected employee and the highest official of any municipality in which the affected employment site is located.

Note: An employer shall notify the department of a business closing or mass layoff by providing written notice delivered to the Dislocated Workers Unit, Department of workforce development, P.O. Box 7972, Madison, Wisconsin 53707.

(2) (a) In the case of the sale of part or all of a business the exception in s. 109.07 (6) (a), Stats., may apply. If that exception does not apply and if notice is required, the seller shall provide notice of any business closing or mass layoff that occurs up to the effective date of sale, and the buyer is responsible for providing notice of any business closing or mass layoff that takes place thereafter. If termination or layoff takes place on the sale's effective date, notice to affected employees not hired by the buyer in connection with the sale is the responsibility of the buyer.

(b) Notwithstanding the allocation of responsibility for notice in par. (a), a buyer and seller may issue notices jointly or as agents of one another. Buyers and sellers also may enter into private agreements which address their respective rights and notice obligations under this subsection.

(c) If notice is not given as required by par. (a), the employer required to give notice shall be liable for penalties under s. 109.07 (3) and (4m), Stats.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.03 Who must receive notice. (1) An employer shall provide notice to all affected employees that may reasonably be expected to lose employment as a result of a business closing or mass layoff. If at the time the notice is given, the employer is unable to identify which employee will lose employment due to elimination of a particular position, notice shall be provided to the employee currently holding that position.

(2) An employer shall notify the collective bargaining representative of an affected employee by providing written notice to that employee's local bargaining agent or the chief elected officer of the employee's exclusive bargaining agent.

(3) An employer shall notify the affected municipality of the business closing or mass layoff by providing written notice to the mayor of a city, town board chairman or village president. In the case of cities organized under a city manager plan, notice shall be delivered to the president of the city council and city manager. For villages organized under a city manager plan, notice shall be delivered to the president of the village board of trustees and the village manager.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.04 When employer notice must be given. (1) An employer who has decided upon a business closing or mass layoff in this state shall provide written notice of such action no later than 60 calendar days prior to the date that the closing or layoff occurs. The department shall, upon complaint, determine whether notice is required or should have been provided.

(2) (a) An employer is not required to provide notice as required in this section unless affected employees lose employment in sufficient number on a particular date to meet the definition of business closing or mass layoff. However, subject to par. (c), 2 or more groups of employees who are affected during a 90-day period may be considered in the aggregate in order to determine whether the business closing or mass layoff thresholds have been met, unless the loss of employment in different groups are the result of separate and distinct actions and causes. In order to be considered in the aggregate, each group of employees affected by a reduction in the workforce on different dates must, by itself, be insufficient to trigger notice obligations.

(b) For the purpose of this subsection successive layoffs or terminations that result from different events are separate and distinct actions and causes. Successive layoffs or reductions in the workforce caused by ongoing unfavorable business conditions are separate and distinct if the employer had a reasonable basis for believing that the subsequent reduction would not necessarily follow from the earlier reduction or reductions.

(c) The department shall consider, subject to par. (a), a series of layoffs that are related and conducted by the employer with the intent to evade the notice requirements of s. 109.07, Stats. as failure to give timely notice.

(d) The department shall consider permanent or routine notice given by an employer with the intent to evade the requirements of s. 109.07, Stats., as failure to give timely notice.

(3) For the purposes of this section, an affected employee's date of layoff or termination is the date active employment is first denied because of a business closing or mass layoff. The date of an employees' reduction in hours of work of 50% or more in a given month is the first business day in the month in which the employee experiences that reduction. Notice is required when it becomes evident that the reduction will extend beyond 6 months.

(4) (a) An employer may use any reasonable method of delivery designed to result in receipt of written notice at least 60 days before the business closing or mass layoff occurs. Employers must exercise reasonable diligence in issuing notices but do not have to take extraordinary or unreasonable measures to ensure notices are actually received by all parties.

(b) A reasonable method of delivery includes but is not limited to, first class mail, personal delivery with optional signed receipt or in the case of notification directly to affected employees, insertion of notice into pay envelopes. A ticketed notice, in other words, a preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of this section.

(5) To determine whether a business enterprise is an employer subject to s. 109.07, Stats., or to determine the number of employees in an employers workforce or at an employment site against which the 25% threshold for a mass layoff is to be calculated, the point in time at which that number is to be measured is the date the first notice is required to be given. If this "snapshot" of the amount of employees on the date is not representative of the employers ordinary or average employment levels over the previous 90 days then the department shall use a more representative number.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.05 Extension of notice. Additional notice of a delayed business closing or mass layoff must be issued within a reasonable time after the employer learns there will be a postponement or delay beyond the date announced in the original notice. The additional notice shall be directed to the same recipients of the original notice. The additional notice shall include reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement or change.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.06 Content of employer notice. (1) Notice by the employer to each affected employee shall contain at least all of the following:

(a) The name and address of the employment site where the business closing or mass layoff will occur and the name and telephone number of a company official to contact for further information.

(b) A description of whether the planned action is expected to be permanent or temporary and, if the entire employment site is to be closed, a statement to that effect. If the planned action

is expected to be temporary the notice should to the extent reasonable include the estimated duration of that action, if known.

(c) The expected date when the business closing or mass layoff will commence and the expected date of the employee's layoff or separation.

(d) The name and address of the employee's collective bargaining representative, if applicable.

(2) Notice to the collective bargaining representative of an affected employee shall contain all of the following:

(a) The name and address of the employment site where the business closing or mass layoff will occur and whether the planned action is expected to be permanent or temporary, and if the entire employment site is to be closed a statement to that effect.

(b) The schedule of separation or layoff, a list including the job titles of the affected positions and the names of employees currently holding those jobs or expected to be affected by the business closing or mass layoff.

(c) The name and address of a company official for the bargaining representative to contact for further information.

(3) Notice to the department and to the highest official of the municipality in which the affected employment site is located shall contain all of the following:

(a) The name and address of the employment site where the business closing or mass layoff will occur.

(b) The name and telephone number of a company official to contact for further information.

(c) The expected date of the first separation or layoff.

(d) The number of employees affected by the business closing or mass layoff.

(e) A description of whether the planned action is expected to be permanent or temporary and, if the entire employment site is to be closed, a statement to that effect. If the planned action is expected to be temporary the notice should include to the extent reasonable the estimated duration of that action, if known.

(4) (a) Information provided in the notice shall be based on the best information available to the employer at the time the notice is served. Errors in information provided in a notice that occur because events subsequently change or that are minor inadvertent errors are not to be considered a violation of s. 109.07, Stats.

(b) Minor inadvertent errors includes but is not limited to factual errors that result because circumstances later changed, the omission or misstatement of position titles or number of employees in a given position, typographical errors or other minor inaccuracies that were unintended.

(5) Employers may use a form of notice that satisfies the notice requirements of the federal Worker Adjustment and Retraining Notification Act as specified in 20 CFR 639.7, as a substitute for the notice required in this section. In those instances when notice is required under s. 109.07, Stats., but not clearly required under federal law, employer notice shall comply with this section.

(6) Conditional notice may be given upon the occurrence or nonoccurrence of an event, such as the renewal of a major contract, other than the renewal of a labor contract between the employer and any potentially affected employees as defined in s. 109.07 (1) (a), Stats., when the event is definite and the consequences of its occurrence will lead to a business closing or mass layoff less than 60 days after the event.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.07 Posting of notice. An employer shall permanently post in one or more conspicuous places where notices to employees are customarily posted a written notice of employees' rights, in a form approved by the department, as required by s. 109.07 (7), Stats.

Note: A copy of the form may be obtained at no charge from the department's Equal Rights Division, P.O. Box 8928, Madison, Wisconsin 53708.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91

DWD 279.08 Exceptions. An employer is not liable for failure to give notice if the department, upon complaint, determines the business closing or mass layoff is caused by any of the following:

(1) A strike or a lockout not intended to evade the requirements of s. 109.07, Stats., including but not limited to loss of employment for nonstriking employees who lose work with an employer because of a strike.

(2) The sale of all or part of an employer's business, if the purchaser agrees, in writing, as part of the purchase agreement to hire substantially all of the affected employees with not more than a 6-month break in employment.

(3) (a) The relocation of all or part of an employer's business within a reasonable commuting distance, if the employer offers to transfer or hire substantially all of the affected employees with not more than a 6-month break in employment.

(b) Offers to transfer shall be considered a relocation under this subsection if the employee receives a bona fide transfer offer to an employment site owned and operated by a related enterprise. If the new employment site is within a reasonable commuting distance, the relocation exception will apply, regardless of whether the employer offers to compensate the affected employee for relocation costs. However, an employer's offer to pay relocation costs may make a more distant site equivalent to one within a reasonable commuting distance for purposes of this subsection.

(c) Under this subsection, a "reasonable commuting distance" shall be presumed to be a distance of less than 50 miles, unless an affected employee has already been commuting 50 miles or greater on a voluntary basis prior to the relocation or indicates in writing that he or she is willing to commute 50 miles or more under a relocation. On a case by case basis, the department may determine that a commuting distance of less than 50 miles is not reasonable if industry practice or local conditions, such as climate, geographic accessibility, the quality of roads, customary available transportation, including public transportation, and travel time, so warrant.

(4) (a) The completion of a particular project, activity or undertaking or work of a specific duration, including seasonal work if the affected employees were hired with the understanding that their employment was limited to the duration of the work or project.

(b) For the purposes of this paragraph, an employer is not required to provide notice to agricultural, construction or other employees whose work is clearly identified as seasonal but not recurring, or who are hired for harvesting, processing, or for work limited to a particular project.

(c) The department shall consider usual and customary employment practices of the industry or locality, employment contracts or collective bargaining agreements in determining whether the exemption under this paragraph applies to a particular situation.

(d) A particular project, activity or undertaking or work will be considered to be of a specific duration where employees understand that, upon completion of a particular project, activity, undertaking or work, their employment will cease. There is no requirement that a specific termination date be known or communicated to employees.

(e) Whether affected employees understand at the time of hire that their employment was for a particular project, activity or undertaking, or work of a specific duration, shall be determined by reference to employment contracts, collective bargaining agreements or

employment practices of an industry or a locality. The burden of proof will be the employer's to show that the temporary nature of the project or facility was clearly understood.

(5) Business circumstances that were not foreseeable when the notice would have been timely given.

(a) Factors that the department shall consider in determining whether the exemption under this paragraph applies include without limitation by enumeration a strike or lockout at a major supplier of the employer, a government ordered closing of an employment site without prior notice, the unexpected termination of a major contract the employer has with a principal client or customer, or an employer's sudden inability to obtain sufficient supplies to be used in production at a competitive cost.

(b) For purposes of this paragraph sudden, dramatic or unexpected events, are considered not foreseeable.

(6) A natural or man-made disaster beyond the control of the employer.

(a) For purposes of this paragraph an employer must be able to demonstrate that its business closing or mass layoff is a direct result of a natural or man-made disaster.

(b) Where a business closing or mass layoff is an indirect result of a natural or man-made disaster this exception does not apply, but the unforeseeable business circumstances exception in sub. (5) may apply.

(7) A temporary cessation of business operations, if the employer recalls the affected employees on or before the 60th day beginning after the cessation.

(8) (a) At the time the 60-day notice would have been required, the employer was actively seeking capital or business to prevent or postpone indefinitely the closing or layoff and the employer reasonably believed both that it had a realistic opportunity of obtaining the necessary capital or business and that giving notice would prevent the employers' action from succeeding.

(b) Upon receipt of a complaint concerning an employers' failure to give notice under this subsection, the department shall request from and the employer shall provide a written chronological record of those steps taken at or shortly before the time notice would have been required, which shall include the following:

1. Written requests for loans of capital to individuals or lending institutions.
2. Written replies granting or denying requests for loans of capital from individuals or lending institutions. If an offer for a loan or credit is rejected by the employer, the employer must state to the department the reasons, in writing for refusing the offer.
3. Evidence that the employer sought financing or refinancing through the issuance of stocks, bonds or other methods of internally generated financing or sought additional money, credit or business through any other commercially reasonable method.
4. Evidence that the capital or business sought was sufficient, if obtained, to have enabled the employer to avoid or postpone the closing or mass layoff.
5. Evidence that an employer's business source would not do business with a troubled company or a company whose workforce would be looking for other jobs.

(c) All records, individual documents or other material submitted under this paragraph shall be notarized by the employer as required by the department.

(d) The employer shall provide to the department an affidavit verifying the content of the notarized documents.

DWD 279.09 Applicability. (1) Voluntary notice by an employer is encouraged, even in situations which technically do not constitute a business closing or mass layoff. For that reason, whether particular actions by employers actually constitute a business closing or mass layoff within the meaning of s. 109.07, Stats., will depend on the actions themselves, and not on how characterized by an employer in any written notice.

(2) The amount for which an employer is liable for claims by affected employees shall be reduced by any wages paid by the employer for the period of the violation and any voluntary and unconditional payment by the employer to the employee that is not required by any legal or contractual obligation.

(3) An employee who has received notice of a business closing or mass layoff but who remains employed and is placed on paid leave or comparable program is not an affected employee for the purposes of this chapter even though the employee does not report to work or is transferred to another position or assigned different job duties.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.10 Complaint. A complaint concerning an employer's failure to give timely notice of a business closing or mass layoff, may be filed by any affected employee, the highest official of any municipality in which the affected employment site is located, or the collective bargaining representative of any affected employee. The complaint must be in writing, signed by the complainant and filed with the department's Equal Rights Division, P.O. Box 8928, Madison Wisconsin 53708.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.11 Reviews. (1) After a department investigator has issued an initial determination on a claim, the claimant or the employer named in the claim may request an administrative review. If an investigator has issued a determination on whether notice should be given under s. 109.07 (1m), Stats., any person entitled to receive notice under s. 109.07 (1m), Stats., may request administrative review of that determination. All requests for administrative review of an initial determination must be in writing and must be mailed to the department within 10 days of the initial determination. A request for administrative review shall specify the reasons for contesting the initial determination. The department in its discretion may deny a request for administrative review if adequate issues for review are not presented.

(2) The administrative review shall be conducted by either the investigator's supervisor or a designated department employee other than the investigator that issued the initial determination. The administrative review is not a contested case proceeding. The person conducting the review may determine whether the review shall be limited to the existing file or may include new information or arguments. The administrative review shall conclude with a written determination that either affirms, reverses or modifies the initial determination.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.12 Referrals. The department shall refer each claim filed by an employee to the department of justice unless the claim is satisfied.

Note: The intent of this section is to provide for a prompt informal review of initial determinations. These decisions should not be subject to formal appeals because the determinations control only the contents of a case file referral to the department of justice. By providing that all unsatisfied claims are to be referred, this section preserves the right of any individual to take a claim to court under s. 109.07 (4) (c), Stats., if the department of justice does not proceed with the referral within 120 days. An employer that opposes the department's determination will have an opportunity to present its arguments to the department of justice. If the department of justice proceeds in court, that will be a "de novo" proceeding.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.

DWD 279.13 Records and inspections. The employer shall maintain and have available for inspection by the department copies of all notices and correspondence delivered to affected employees, municipalities, collective bargaining representatives and the department, as well as any records used in connection with preparation and delivery of these notices.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91.